Filed 5/12/16 In re K.M. CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| In re K.M. et al., Persons Coming Under the Juvenile Court Law. | |
| SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>Lashone M.,<br><br>Defendant and Appellant. | D069378<br><br>(Super. Ct. No. J519250AB) |

APPEAL from an order of the Superior Court of San Diego County, Sharon L. Kalemkiarian, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Paula J. Roach, Deputy County Counsel, for Plaintiff and Respondent.

Lashone M., the mother of nine-year-old K.M. and eight-year-old L.M., appeals the juvenile court's dispositional order sustaining the petition of the San Diego County Health and Human Services Agency (the Agency) and removing K.M. and L.M. from her custody.[1] Because the dependency action began less than six months after Lashone, K.M., and L.M. moved to California from West Virginia, the juvenile court had to evaluate whether California had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam. Code, §§ 3400 et seq.)[2] Lashone argues the juvenile court lacked subject matter jurisdiction under the UCCJEA and did not comply with the UCCJEA's procedural requirements in communicating with courts in other states. We conclude the juvenile court properly exercised jurisdiction, and any failure to comply with the UCCJEA's procedural requirements was not prejudicial.

FACTUAL AND PROCEDURAL BACKGROUND

Lashone lived with K.M. and L.M. in West Virginia for 13 years before moving to Maryland around 2013. Maryland Child Protective Services (CPS) made three referrals for K.M., L.M., and their three half siblings in 2013, alleging domestic violence, substance abuse, sexual abuse, and unsafe living conditions. In May 2014, CPS filed petitions on behalf of all five children, alleging Lashone was often under the influence, leaving the children in need of assistance and protective supervision. The family returned to West Virginia from Maryland in April or May 2014. In June 2014, a Maryland court

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1 The dispositional order is an appealable judgment pursuant to Welfare and Institutions Code section 395. (*In re S.B.* (2009) 46 Cal.4th 529, 531-532.)

2 Further statutory references are to the Family Code, unless otherwise specified.

dismissed the CPS petitions without prejudice because the children had moved outside the state.

In March 2015, a West Virginia social worker interviewed K.M. and L.M. Both denied that anyone in their family used drugs and reported adequate supervision and housing. Around April or May 2015, Lashone moved to California with K.M. and L.M. The West Virginia referral was closed without a full investigation because Lashone had moved outside the state.

In September 2015, the Agency filed petitions under Welfare and Institutions Code section 300, subdivisions (b) and (g), alleging Lashone left K.M. and L.M. inadequately supervised. Lashone had been arrested for transporting 47.5 pounds of marijuana while crossing the border from Mexico into California; K.M. and L.M. were inside the vehicle at the time of her arrest. Lashone denied knowing there was marijuana in her car but acknowledged a person asked her to transport marijuana and money across the border and admitted having given someone keys to her car.

The juvenile court held a detention hearing on September 16, 2015. The court took temporary emergency jurisdiction pursuant to section 3424, subdivision (a), and continued the hearing to the following day in order for Lashone to attend. Lashone filed parentage inquiry forms referencing paternity and child support orders in West Virginia and Maryland; Larry M., the biological father of K.M. and L.M., filed a parentage inquiry form denying any such prior paternity or child support orders. At the continued hearing on September 17, 2015, the court noted the potential UCCJEA issue and asked the parties to provide copies of any prior custody or support orders in other jurisdictions. The court

found a prima facie case for detention and granted the Agency discretion to detain the children with Larry or with an appropriate relative or non-relative family member.

On October 7, 2015, the court held a jurisdiction and disposition hearing. The court found Larry to be K.M. and L.M.'s presumed father and entered a judgment of paternity. The court found that the family had not lived in California for six months before the action began. Lashone told the court the last state she had lived in for six months was West Virginia. The court maintained temporary emergency jurisdiction under the UCCJEA and ordered the Agency to provide contact information for the courts in Maryland and West Virginia.

On October 28, 2015, Judge Kalemkiarian wrote a memorandum stating Maryland did not appear to have jurisdiction under the UCCJEA, as the family had left Maryland for West Virginia long ago and Maryland had closed its CPS investigation. However, Judge Kalemkiarian noted that West Virginia did present a UCCJEA issue. Judge Kalemkiarian stated she had called the West Virginia court that morning and spoken to clerks who stated they would return her call after conferring with a judge. At the settlement conference the next day, Judge Kalemkiarian noted the UCCJEA issue remained unresolved.

On November 2, 2015, Judge Kalemkiarian faxed a letter to Judge Lorensen, the presiding judge in Martinsburg, West Virginia, describing the UCCJEA issue. Judge Kalemkiarian requested a response by e-mail or telephone to the San Diego courtroom clerk, Ms. Deni Rosenberry. On November 3, 2015, Ms. Rosenberry added handwritten notes to Judge Kalemkiarian's October 28th memorandum stating a West Virginia court

clerk named Debbie had called that day to inform her that the West Virginia court had "no record of the family and that San Diego should take jurisdiction."

On November 13, 2015, the juvenile court held a contested adjudication and disposition hearing before Judge Leonard, who presided in Judge Kalemkiarian's absence. Ms. Rosenberry testified about her communications with the West Virginia clerk on November 3rd. The court ordered Judge Kalemkiarian's October 28th memorandum filed and sent to the parties. Based on the communications between the courts, Judge Leonard found that West Virginia declined jurisdiction in favor of California under the UCCJEA. However, the court continued temporary emergency jurisdiction, finding Maryland's UCCJEA issues unresolved.

On November 25, 2015, the court held a status conference. Judge Kalemkiarian explained that Maryland was not the home state of K.M. and L.M. and that it was clear the family left Maryland for West Virginia more than a year before this action began. The court invited the parties to be heard on its initial finding as to jurisdiction. Hearing no argument or objection, the court took permanent jurisdiction under the UCCJEA and set a contested jurisdiction and disposition trial for December 8, 2015.

At trial, the social worker testified that Lashone's only criminal charge was for transportation of marijuana that led to the instant dependency proceeding. There were no concerns Lashone was under the influence during visits with K.M. or L.M., and visits had gone well. However, the social worker expressed concern that Lashone had tested positive for marijuana, given her attempt to transport marijuana into the state. The social

worker also expressed concern that Lashone had child welfare histories in Maryland and West Virginia and had fled both jurisdictions without participating in services.

The juvenile court found the allegations in the Agency's petition true, finding K.M. and L.M. to be persons described in Welfare & Institutions Code, section 300, subdivision (b).[3] The court removed K.M. and L.M. from Lashone's care, placed them in out-of-home care, and ordered services for Lashone and Larry. Lashone timely appealed.

## DISCUSSION

### I. *Legal Principles and Standard of Review*

The UCCJEA is the exclusive method for determining subject matter jurisdiction in child custody proceedings involving other jurisdictions. (*In re M.M.* (2015) 240 Cal.App.4th 703, 715 (*M.M.*); *In re A.M.* (2014) 224 Cal.App.4th 593, 597 (*A.M.*); *Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1287 (*Schneer*).) A "child custody proceeding" is one in which "legal custody, physical custody, or visitation with respect to a child is an issue." (§ 3402, subd. (d).) A dependency action is a child custody proceeding under the UCCJEA. (*M.M.*, *supra*, at p. 715.) The UCCJEA serves to avoid jurisdictional conflict and relitigation of another state's decisions, litigate custody where the child and family have the closest connections, and promote interstate cooperation. (*Ibid.*)

"Subject matter jurisdiction either exists or does not exist at the time the action is commenced and cannot be conferred by stipulation, consent, waiver or estoppel." (*A.M.*,

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[3] The juvenile court previously dismissed the count under Welfare & Institutions Code section 300, subdivision (g).

*supra,* 224 Cal.App.4th at p. 598; *Schneer, supra,* 242 Cal.App.4th at p. 1287.) As with any statute, interpretation of the UCCJEA is a question of law, subject to de novo review. (*Schneer, supra,* at p. 1287.) However, where the jurisdictional facts are contested, we review the juvenile court's factual findings under the deferential substantial evidence standard. (*Id.* at p. 1286.)[4]

II. *California Had Jurisdiction Under The UCCJEA*

Lashone argues the juvenile court erred by assuming jurisdiction under section 3421, subdivision (a)(2). She argues the juvenile court failed to properly communicate with West Virginia and Maryland before assuming jurisdiction. We conclude the juvenile court properly exercised temporary emergency jurisdiction under section 3424 and "significant connection" jurisdiction under section 3421, subdivision (a)(2). We also conclude the juvenile court was not required to contact Maryland, given uncontroverted evidence Lashone, K.M., and L.M. had not lived in Maryland since April or May 2014, nearly 18 months before this action began.

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4 In *In re A.C.* (2005) 130 Cal.App.4th 854, the court stated, "We are not bound by the juvenile court's findings regarding subject matter jurisdiction, but rather 'independently reweigh the jurisdictional facts.' " (*Id.* at p. 860.) Several courts have cited this language to suggest that an appellate court may reweigh jurisdictional facts. (See *Ocegueda v. Perreira* (2015) 232 Cal.App.4th 1079, 1084; *A.M., supra,* 224 Cal.App.4th at p. 598; *In re Nelson B.* (2013) 215 Cal.App.4th 1121, 1129; *In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1348.) *Schneer* considered *A.C.* and concluded a reviewing court could not disregard a trial court's factual findings under the UCCJEA and reweigh jurisdictional facts. (*Schneer, supra,* 242 Cal.App.4th at pp. 1283, 1286.) Instead, where the facts are contested, *Schneer* concluded a court must review jurisdictional findings for substantial evidence. (*Id.* at p. 1286.) We agree with the reasoning in *Schneer* and apply the deferential substantial evidence standard of review to contested factual findings.

A. California Properly Exercised Temporary Emergency Jurisdiction

A California court may exercise temporary emergency jurisdiction when a "child is present in this state and . . . it is necessary in an emergency to protect the child because the child . . . is subjected to, or threatened with, mistreatment or abuse." (§ 3424, subd. (a).) "An 'emergency' exists when there is an immediate risk of danger to the child if he or she is returned to a parent." (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1097.) "Although emergency jurisdiction is generally intended to be short term and limited, the juvenile court may continue to exercise its authority as long as the reasons underlying the dependency exist." (*In re Jaheim B., supra,* 169 Cal.App.4th at pp. 1349-1350.) As the parties agree, the juvenile court properly exercised temporary emergency jurisdiction under the UCCJEA. (*A.M., supra,* 224 Cal.App.4th at p. 599 [emergency jurisdiction properly found where parents smuggled drugs across the Mexico-California border with their children in the car].)

B. California Properly Exercised Jurisdiction to Render an Initial Custody Determination

The UCCJEA establishes four bases for subject matter jurisdiction for courts to make an initial custody decision: home state, significant connection, more appropriate forum, and vacuum jurisdiction. (§ 3421, subd. (a)(1)-(4).) A child's home state has priority over other jurisdictional bases. (§ 3421, subd. (a)(1); *Schneer, supra,* 242 Cal.App.4th at p. 1287.) For a child over six months of age, the home state is "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." (§ 3402, subd. (g); *In re Gloria A.* (2013) 213 Cal.App.4th 476, 483.)

Lashone, K.M. and L.M. had lived in West Virginia for 13 months before moving to California in April or May 2015. As the parties agree, West Virginia was K.M. and L.M.'s home state when this dependency action commenced. (§ 3421, subd. (a)(1).)

Under the UCCJEA, if a child has a home state, a court in another state may assert "significant connection" jurisdiction *only* if the home state declined jurisdiction. (§ 3421, subd. (a)(2).) The home state could decline jurisdiction on two grounds—if another state is a more convenient forum (§ 3427) or if the party seeking jurisdiction engaged in unjustifiable conduct (§ 3428). In addition, for a state other than the home state to assert "significant connection" jurisdiction, *both* of the following must be true: "(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." (§ 3421, subd. (a)(2)(A) & (B).)

Here, substantial evidence supports the juvenile court's finding that West Virginia declined jurisdiction. (§ 3421, subd. (a)(2).) Judge Kalemkiarian's October 28, 2015, memorandum stated the court was waiting for a response from the West Virginia court on the UCCJEA issue. On November 2, 2015, Judge Kalemkiarian faxed a letter to Judge Lorensen in West Virginia. The next day, a West Virginia clerk called Ms. Rosenberry to state that West Virginia had no record of the family and "San Diego should take jurisdiction." At the hearing on November 13, 2015, Ms. Rosenberry testified about her call with the West Virginia clerk, and the court provided copies of memoranda memorializing the communications.

In addition, California had a significant connection with Lashone, K.M., and L.M., and substantial evidence was available in this state concerning K.M. and L.M.'s care and protection. (§ 3421, subd. (a)(2)(A) & (B).) Lashone had lived with K.M. and L.M. in California for approximately five months when this action began. She was not in California on a temporary visit; she moved to the state with the children's great-aunt to escape an abusive relationship. (*In re S.W.* (2007) 148 Cal.App.4th 1501, 1509 [mother who remained in California and sought welfare in the state was not here temporarily].) She signed up for welfare, food stamps, and Medi-Cal in California. Lashone sought treatment at a methadone clinic in San Diego and held a California medical marijuana card. The instant proceedings began when Lashone tried to transport drugs across the California-Mexico border with K.M. and L.M. in the car. The children attended school in California. Thus, California had a "significant connection" with Lashone, K.M., and L.M., such that California courts had jurisdiction under the UCCJEA to make an initial custody determination. (§ 3421, subd. (a)(2).)

No other state had a significant connection with Lashone, K.M., and L.M. under the UCCJEA. Lashone, K.M., and L.M. left Maryland nearly 18 months before California dependency proceedings began. While CPS made referrals and opened an investigation in 2014, it closed the file once the family left Maryland in April or May 2014. Maryland did not have a significant connection with K.M. and L.M. or substantial evidence regarding their care or protection. (§ 3421, subd. (a)(2)(A) & (B).)

Thus, California had subject matter jurisdiction under section 3421, subdivision (a)(2), at the time this action commenced. California, not West Virginia or Maryland, is

the appropriate forum to exercise permanent jurisdiction in this child custody proceeding. (*In re S.W., supra,* 148 Cal.App.4th at p. 1510 [children and parent had a significant connection to California, not Nebraska; they lived in California at the time proceedings commenced, and California, not Nebraska, had substantial evidence regarding the children's care, protection, training, and personal relationships].)

C. Any Procedural Deficiencies in the Court's Communications with West Virginia Were Not Prejudicial

Lashone argues the juvenile court did not follow proper procedures in communicating with the West Virginia court. She argues the juvenile court: (1) did not have direct court-to-court communications with the West Virginia court; (2) did not contact the West Virginia court "immediately" after learning about the potential UCCJEA issue; (3) did not give Lashone an opportunity to participate in communications; and (4) did not maintain an adequate record of communications. We address these arguments in turn and conclude that any procedural deficiencies in the court's communications with the West Virginia court were not prejudicial. (*In re C.T.* (2002) 100 Cal.App.4th 101, 110 (*C.T.*) [procedural errors in UCCJEA communications are reviewed for harmless error].)

1. *Court-to-Court Communications*

Section 3410, subdivision (a), provides that a court of this state may communicate with a court in another state to resolve UCCJEA jurisdictional issues. Judge Kalemkiarian spoke to clerks in West Virginia and sent a letter to the presiding judge of the West Virginia court. A West Virginia clerk replied to these inquiries by calling San

Diego Deputy Clerk Deni Rosenberry to state that the West Virginia court declined jurisdiction in favor of California.

Lashone argues these communications were deficient because section 3410 required "judge-to-judge" communication between the San Diego and West Virginia courts. We disagree. First, the statute "provides only that the juvenile court 'may' communicate with a court of another state and does not mandate that the juvenile court do so." (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1141; see § 3410, subd. (a).) Because court-to-court communication was discretionary, there is no support for the proposition it had to be between judges. (*In re Angel L.*, *supra*, at p. 1141 [no error in juvenile court's decision not to communicate with Nevada court].) Second, communications between the West Virginia and California court clerks were adequate to convey West Virginia's intent to decline jurisdiction in favor of California.

*M.M.*, *supra*, 240 Cal.App.4th 703 is instructive. In that case, the juvenile court tried to contact a court in Japan, the minor's home state. (*Id.* at pp. 710, 714-715.) Japanese court officers and officials made clear that it would be inappropriate under the Japanese legal system for a Japanese court to discuss jurisdiction with the juvenile court. (*Id.* at pp. 714, 716-717.) We concluded the California court properly exercised "significant connection" jurisdiction under section 3421, subdivision (a)(2), despite the lack of an express order from a Japanese court declining jurisdiction and finding California a more appropriate forum. (*Id.* at pp. 716-717.) As we explained, "when a home state declines jurisdiction in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding," a California

court may infer the home state declined jurisdiction on grounds California is the more appropriate forum. (*Id.* at p. 717.) Here, communications between the West Virginia clerk and the San Diego clerk were sufficient to convey West Virginia's intent to decline jurisdiction on the grounds California is the more appropriate forum. (*Ibid.*)[5]

One Colorado court reached a different result, concluding the UCCJEA requires judge-to-judge communications between courts of different states. In *People ex rel. D.P.* (Colo. App. 2008) 181 P.3d 403 (*D.P.*), the court found error where the trial court's clerk, rather than the judge, communicated with a Rhode Island court regarding jurisdiction. Interpreting identical provisions of the UCCJEA, the court noted that a "court" is defined as "an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination." (*Id.* at p. 407; see § 3402, subd. (f).) Because only a judge or magistrate has the power to establish, enforce, or modify a custody determination, the court concluded the UCCJEA requires judge-to-judge communication. (*D.P., supra,* at p. 407.) We disagree with this approach. Section 3410, subdivision (a) states, "A court of this state may communicate with a court in another state. . . ." Irrespective of the meaning of "court," a court "may communicate" with another court through its judicial staff, including its clerks.

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5 Lashone cites Rule 7.1014 of the California Rules of Court, which applies to communications between "judicial officers" in different counties to resolve venue in guardianship cases under the Probate Code. (Cal. Rules of Court, rule 7.1014(b); see Probate Code § 2204, subd. (b).) However, Lashone points to no authority indicating these procedures apply to communications between courts in different states to resolve UCCJEA jurisdictional issues.

Moreover, even if judge-to-judge communication were required under the UCCJEA, Lashone does not show prejudice. (*D.P., supra,* 181 P.3d at pp. 407-408 [concluding error was harmless]; *Cristian I., supra,* 224 Cal.App.4th at p. 1101 [indirect means of communication between California and Arizona courts not prejudicial].) Lashone does not argue communications between officers of the court are insufficiently reliable for determining jurisdiction under the UCCJEA. Indeed, Lashone's counsel had the opportunity to cross-examine Ms. Rosenberry on the stand, and Lashone received copies of the court's communications. It is not reasonably probable that judge-to-judge communications would have changed the jurisdictional outcome.

2. *Immediacy of Communications*

A court assuming temporary emergency jurisdiction must "immediately communicate with the other court" upon being informed of a child custody proceeding or determination in another state. (§ 3424, subd. (d).) "The meaning of section 3424, subdivision (d) is plain and unambiguous. A California court must contact the sister state court immediately. As a practical matter, we interpret this requirement to be as soon as possible after learning of the existence of proceedings in the sister state court." (*C.T., supra,* 100 Cal.App.4th at p. 110.)

Lashone contends the juvenile court erred when it did not immediately communicate with West Virginia regarding jurisdiction. We agree. The juvenile court recognized the potential UCCJEA issue at the detention hearing on September 17, 2015, and requested copies of prior custody orders from West Virginia. On October 7, 2015, the court established that Lashone had moved to California in April 2015 and had lived in

West Virginia for the preceding year. The court asked the Agency to submit contact information for the Maryland and West Virginia courts. Nevertheless, the court did not initiate contact with the West Virginia court until October 28th, more than a month after this action began. Failure to immediately contact the West Virginia court constituted error under section 3424, subdivision (d). (*Cristian I., supra*, 224 Cal.App.4th at p. 1101 [6-week delay in initiating communication not "immediate"]; *C.T., supra,* 100 Cal.App.4th at p. 111 [1-month delay in initiating communication not "immediate"].)

Nevertheless, the error was not prejudicial. (*C.T., supra,* 100 Cal.App.4th at p. 111 [1-month delay not prejudicial]; *Cristian I., supra,* 224 Cal.App.4th at p. 1101 [6-week delay not prejudicial].) Lashone does not dispute that the juvenile court properly assumed emergency jurisdiction. (§ 3424, subd. (a); *A.M., supra,* 224 Cal.App.4th at p. 598.) Despite the delay, the juvenile court communicated with the West Virginia court before November 13, 2015, when it found West Virginia had declined jurisdiction in favor of California. As in *Cristian I.,* it is not reasonably probable the delay impacted the jurisdictional outcome. (*Cristian I., supra,* at p. 1101.)

3. *Participation of the Parties*

Lashone argues the juvenile court erred when it did not provide her an opportunity to participate in its communications with the West Virginia court. However, as she concedes, under section 3410, subdivision (b), the juvenile court had discretion to allow the parties to participate in court-to-court communications. (§ 3410, subd. (b) ["The court *may allow* the parties to participate in the communication"], italics added.)

If the parties did not participate, the court was required to give the parties "the opportunity to present facts and legal arguments before a decision on jurisdiction is made." (§ 3410, subd. (b).) The juvenile court did so. After Ms. Rosenberry testified at the November 13th hearing, the juvenile court invited cross examination and argument from Lashone's counsel before rendering its decision. Further, Lashone had multiple opportunities to present facts and legal arguments before the November 13th hearing. Lashone testified at the October 7th jurisdiction and disposition hearing that she moved to California in April 2015 and previously lived in West Virginia. The court invited Lashone's counsel to provide relevant custody orders from the West Virginia court. Thus, the juvenile court did not err under the UCCJEA when it did not give Lashone an opportunity to participate in its court-to-court communications.

4. *Record of Communications*

Section 3410, subdivision (e), requires a court to maintain a record of communications, consisting of "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." Lashone claims the juvenile court did not maintain an adequate record of its communications with the West Virginia court. We disagree.

There were three communications between the San Diego and West Virginia court. The October 28th call between Judge Kalemkiarian and West Virginia clerks and the November 3rd call between Ms. Rosenberry and a West Virginia clerk, respectively, were described in written memoranda sent to the parties. Judge Kalemkiarian's

November 2nd letter was tangible and retrievable by the parties. Ms. Rosenberry testified at the November 13th hearing, at which a reporter's transcript was made.

The UCCJEA does not require a verbatim account of communications between courts. (*C.T., supra,* 100 Cal.App.4th at pp. 111-112.) "Written memoranda and reporter's transcripts are tangible mediums and are retrievable by the parties." (*Id.* at p. 111.) The juvenile court maintained an adequate record of communications with the West Virginia court.

D. The Juvenile Court Was Not Required to Determine Whether Maryland Issued Prior Custody Orders

Lashone suggests the juvenile court erred by failing to inquire whether Maryland issued prior custody orders. We disagree. The court invited Lashone and the Agency to submit prior custody orders from other states. Lashone also had a statutory obligation to provide prior custody orders to the court. (§ 3429, subd. (a) & (d).) Neither parent or counsel provided such evidence.

In any event, Lashone, K.M., and L.M. no longer resided in Maryland, having moved out of the state in April or May of 2014. A state that issues an initial custody order retains "exclusive, continuing jurisdiction" to modify that order. (§ 3422.) However, where the parents and children no longer reside in the state, another state may have jurisdiction to modify the prior order. (§ 3423, subd. (b).) Therefore, even if Maryland had issued a prior custody order, it would have lost its "exclusive, continuing jurisdiction" (§ 3422) because California had jurisdiction to make an initial custody order (§ 3421, subd. (a)(2)), and the juvenile court found that the parents and children no longer

resided in Maryland. (§ 3423, subd. (b); see *Keisha W. v. Marvin M.* (2014) 229 Cal.App.4th 581, 586 [California had jurisdiction to modify a Texas child custody order under § 3423 where the family no longer lived in Texas].) Thus, the juvenile court did not err when it did not inquire whether Maryland had issued a prior custody order for K.M. and L.M.

DISPOSITION

The order is affirmed.

BENKE, Acting P. J.

I CONCUR:

AARON, J.

I concur in the result.

IRION, J.